



## Ukraine

### Country Reports on Human Rights Practices - [2000](#)

Released by the Bureau of Democracy, Human Rights, and Labor

February 23, 2001

Ukraine is governed by a directly elected president and a unicameral parliament, the Verkhovna Rada (Supreme Council), which is elected partially according to proportional representation and partially by direct constituency mandate. Incumbent President Leonid Kuchma was reelected after two rounds of voting on October 31 and November 14, 1999. There were some irregularities during the election campaign and during the balloting, including those cited in the March 7 final report of the Office for Security and Cooperation of Europe/Office of Democratic Institutions and Human Rights (OSCE/ODIHR) which stated that the presidential elections of October and November 1999 "failed to meet a significant number of the OSCE election related commitments." However, almost all observers agreed that the election results reflected the will of the electorate. Despite numerous flaws and irregularities, previous national elections in 1998 and 1994 also generally reflected the will of the electorate. The President appoints the Cabinet and controls government operations. In an April referendum, which observers described as flawed in several respects but probably reflected the will of the people, voters approved several changes to the Constitution which would expand presidential powers and increase executive branch influence over Parliament. The Constitutional Court later struck down two of the six proposed amendments; however, constitutional changes had not been implemented by year's end. The Constitution mandates an independent judiciary; however, the courts are funded through the Ministry of Justice, are subject to political interference and corruption, and are inefficient.

The Security Service of Ukraine (SBU), the Ministry of Internal Affairs (which controls the various police forces), and the Ministry of Defense have equal responsibility for internal security and report to the President through the Cabinet. The State Tax Administration also has law enforcement powers, which it exercises through the tax police. The armed forces largely have remained outside of politics. While civilian authorities generally maintain effective control of the security forces, institutional government corruption sometimes can lead to their improper use. The SBU and other government agencies have interfered indirectly in the political process through criminal and tax investigations of politicians, journalists, and influential businessmen. Members of the security forces committed human rights abuses.

Ukraine is making a difficult transition from a centrally planned to a market-based economy. The private sector has continued to grow and now represents a substantial portion of the economy. For the first time since independence, the country experienced economic growth (5 percent). Nevertheless, the country remains in a serious economic crisis. While the Government made some progress in key areas such as privatization, energy, and the state budget, the country lacks many of reforms needed to generate sustainable economic growth. Industrial output has suffered years of sharp decline. A 1999 presidential decree on agricultural reform led to a break-up of the Soviet-era state farm system. Legislation enabling the granting of land titles was passed; however, the property rights of former collective farm workers are weak and poorly defined. Production in key areas such as wheat was unreliable. The summer grain harvest was the worst since 1945, but the winter crop was the best in years. According to official statistics, about half of the work force is employed formally in manufacturing, with the balance divided between services and agriculture; however, in reality many industrial enterprises have reduced or stopped production. Exports are diversified and include metals, chemicals, sugar, and semifinished goods. The annual per capita gross domestic product for the year was approximately \$669. However, millions of employees go months without being paid, and most individuals derive a significant proportion of their income from the shadow economy. Inflation was 19 percent during the first half of the year, but averaged less than 0.5 percent per month since June. Investment remains at low levels, with many potential investors discouraged by rampant corruption, onerous taxation, and arbitrary licensing practices. Unemployment has affected women disproportionately; 56 percent of those officially registered as unemployed are women. Wealth is concentrated in the political elite and among directors of state-dominated sectors such as metals, oil, and gas.

The Government's human rights record was poor in some areas; however, the Government continued to respect the rights of its citizens in other areas. In previous years, police and military committed extrajudicial killings; however, there were no reports of such incidents during the year. A prominent journalist disappeared in September. In November a decapitated body believed to be his was found. Later that month, a prominent political opponent accused the President of complicity in the disappearance. Those charges have not been proved or disproved. The Government asserted that it is investigating the journalist's disappearance and conducting tests to determine the identity of the corpse; however, the case remains unsolved at year's end, and the authorities' poor handling of the investigation proved a source of great concern. Police and prison officials regularly tortured and beat detainees and prisoners, sometimes resulting in death. The beating of conscripts in the army by fellow soldiers was common and sometimes resulted in death. Prison conditions are harsh and life-threatening. There were instances of arbitrary arrest and detention. Lengthy pretrial detention in very poor conditions was common, and detainees often spent months in pretrial detention for violations that involved little or no prison time if convicted. Long delays in trials are a problem. The Government rarely punishes officials who commit abuses. The SBU, police, and Prosecutor's Office have drawn domestic and international criticism for their failure to take adequate action to curb institutional corruption and abuse in the Government. Many high-profile corruption cases have been dropped, ostensibly because of lack of evidence. Anticorruption legislation has been enforced selectively, mostly against government opponents and low-level officials. Political interference and corruption affect the judicial process. The judiciary is overburdened, inefficient, and lacks sufficient funding and staff. These factors undermine citizens' right to a fair trial. The criminal justice system has been slow to reform, due to both lack of government effort and strained economic resources. The Government continued to intrude in citizens' lives and infringe on their privacy rights. The Government interfered with the news media and restricted freedom of the press; however, a wide range of opinion is available in newspapers and periodicals. Government interference was particularly severe during the period preceding the April referendum on amendments to the Constitution that would expand presidential powers by limiting the power of the Parliament and in response to coverage of the scandal surrounding the disappearance of an opposition journalist. Self-censorship remained a significant problem. During the 1999 presidential election campaign, government authorities interfered in the election process and stepped up pressure on the media through tax inspections and other measures. The national broadcast media came under particular pressure. There were some limits on freedom of assembly, and there were some instances of restrictions on freedom of association. Limitations on nonnative religious organizations constrained freedom of religion. The Government took steps to return to religious groups properties expropriated during the Soviet era. It returned two churches that were rebuilt with government funds. Some limits on freedom of movement, most notably the registration or "propiska" system, remained. The Government took steps to support the return and resettlement of exiled Tatars in Crimea. As many as 10 elected mayors from several regions reported government harassment stemming from their lack of support for President Kuchma during the 1999 presidential campaign. The SBU monitored the activities of nongovernmental organizations (NGO's) during the year. Violence and discrimination against women; violence against children; societal anti-Semitism; and discrimination against religious, racial, and ethnic minorities are problems. The Government discourages some workers from organizing unions, and forced labor in the form of trafficking in women and girls for sexual exploitation is a significant problem.

## RESPECT FOR HUMAN RIGHTS

### Section 1 Respect for the Integrity of the Person, Including Freedom From:

#### a. Political and Other Extrajudicial Killing

There were no reports of political killings by government agents. In previous years, members of the police and military committed extrajudicial killings; however, there were no reports of such incidents during the year.

There were reports in previous years that police beat persons at alcohol corrective treatment centers and sometimes killed them (see Section 1.c.).

Members of the armed forces killed soldiers during violent hazing incidents in previous years (see Section 1.c.). According to a government official, in 1998 10 to 12 military personnel were beaten to death, and a total of 20 to 30 died as an indirect result of injuries sustained from hazing.

Abuse of prisoners and detainees, and harsh prison conditions, sometimes led to death (see Section 1.c.). Statistics on prison deaths for this year were unavailable. In 1998 there were 1,901 deaths in prison and detention facilities, many due to harsh conditions.

The pervasiveness of corruption, connections between government officials and organized crime, and the political activities of organized crime figures often blurred the distinction between political and criminal acts. Politicians, politically connected businessmen, and journalists have been the victims of possibly politically-

motivated--and sometimes fatal--attacks. There were allegations of government involvement in the disappearance and presumed death of opposition journalist Heorhiy Gongadze; however, those charges have not been proven (see Section 1.b.).

No official statistics for contract killings during the year were available.

The Government made no known progress in resolving a number of the high profile killings of past years. No progress was made in solving the 1999 murder of the security chief of the independent television station STB or the 1999 killings of the chairman of the regional arbitration court Borys Vihrov and the director of local television station Igor Bondar in Odessa. The Government also made no known progress in resolving the 1998 murders of former director of the national bank Vadym Hetman, deputy head of the Crimean government Aleksandr Safontsev, the mayor of Shakhtersk, or the campaign manager of a Kiev mayoral candidate. Nor was there any progress in resolving the 1997 murders of the governor of the Razoolnensky district, the Crimean deputy minister for tourism and resorts, the murder of prominent businessman Arkadiy Tabachnyk, or the bombing of the intensive care unit in Simferopol. In May police arrested a suspect in the 1995 killing of Member of Parliament Yevhen Shcherban.

#### b. Disappearance

On September 16, prominent journalist Heorhiy Gongadze disappeared. Gongadze was the editor of the on-line news journal *Ukrainska Pravda* and was a frequent critic of both the Government and leading business figures. In a July open letter addressed to the Prosecutor General, he complained of government harassment, including being followed and questioned by security forces. In early November, police found a decapitated body outside of Kiev, which Gongadze's friends and family believed was that of the missing journalist. The Government asserted that it is conducting a full-scale investigation of his disappearance. The body was sent to forensic experts for examination, yet no positive identification was made by year's end--authorities did not begin the process of conducting a DNA test until mid-December. On November 28, the leader of the Socialist Party, Oleksandr Moroz, accused the President and other senior government officials of complicity in the disappearance of Gongadze. He also released audio tapes purporting to be conversations between the President, his Administration Chief Volodymyr Lytvyn, and Minister of Internal Affairs Yuri Kravchenko discussing the desirability of Gongadze's abduction. The tapes, provided by a former Presidential security guard, were not authenticated officially by year's end.

#### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits torture; however, police and prison officials regularly tortured and beat detainees and prisoners, and there were numerous reports of such abuse. Amnesty International (AI) and other human rights groups continued to receive regular reports that Berkut (special militia units or riot police) troops tortured and beat inmates as part of regular training exercises. The media reported that police subjected detainees to the "swallow," in which the detainee is placed on his stomach and his feet are tied to his hands behind him, forcing his back to arch. Another abuse is the "baby elephant," in which a gas mask is placed on the prisoner's head and the flow of oxygen slowly reduced. Detainees also were subjected to a method called the "monument," in which a prisoner is suspended by his hands on a rope and beaten. Requesting an attorney often leads to a worse beating, and detainees may be beaten until they waive their right to an attorney. There is no effective mechanism for registering complaints about mistreatment or for obtaining redress for such actions. Prisoners may address complaints to the Ombudsman, and that office has received widespread reports of torture in pretrial detention. However, the Ombudsman has no enforcement authority, and the Government made little effort during the year to end such practices or to punish officials who committed or abetted such abuses. According to the Office of the Ombudsman, most of the complaints that it received centered on human rights violations by law enforcement personnel. In 1999 the Ombudsman was criticized for failing to investigate whether special police units beat prisoners during regular exercises in jail. During the year, the Ombudsman made the treatment of prisoners a priority and investigated conditions in at least two prisons. On December 1, 1999, the Parliament passed an amendment to the Criminal Code that prescribes up to 15 years' imprisonment for torture. However, human rights monitors reported little difference in the treatment of prisoners since adoption of this law.

Police also abused Roma, particularly in the Transcarpathian region, and harassed and abused dark-skinned persons (see Section 5). Police also harassed journalists and refugees (see Sections 2.a. and 2.d.). Police corruption also remained a serious problem.

Reports continued of harsh conditions and violence against conscripts in the armed forces. Senior officers reportedly required malnourished recruits to beg for food or money. Senior conscripts often beat recruits, sometimes to death (see Section 1.a.). Punishment administered for committing or condoning such activities did not serve as an effective deterrent to the further practice of such abuses. Between 1991 and 1998, 450

soldiers were convicted of violent harassment of their colleagues; approximately 200 military personnel were prosecuted in 1998 for violent hazing (10 to 12 conscripts were beaten to death, and 20 to 30 died from injuries related to hazing).

Some politically active individuals were wounded in violent attacks. In February unknown assailants beat parliamentarian Oleksandr Yeliashkevych near a hotel where several Members of Parliament live. Five suspects were charged in the October 1999 bombing in which presidential candidate Natalia Vitrenko was wounded slightly, and more than 30 others were injured. No progress was reported in resolving the April 1999 wounding by gunshot of Kiev municipal government official Mykola Pidmogylny or the November 1999 shooting of Vinnytsia Mayor Dmytro Dvorkis.

Members of the press were hurt in violent incidents throughout the year. In July Anatoliy Zhuchynsky, a reporter for the Vinnytsia newspaper 33 Channel, was assaulted outside his home. He linked the attack to his political reporting. In August two men assaulted Valentyna Vasylichenko, a reporter for the Cherkassy newspaper Antenna, in the stairway outside her apartment. She attributed the attack to her coverage of criminal groups. In September Nikolay Severin, an editor of an independent paper in Luhansk, was attacked by brick-wielding assailants outside his home. He blamed the assault on his critical reporting.

No progress was made in resolving the 1999 firebombing of the office of the Tatar Assembly Mejlis in Simferopol or the 1999 bombing of the office of the Communist Party leader Leonid Hrach in Simferopol. Accusations by opposition presidential candidate Marchuk linking the presidential administration to a false bomb threat that disrupted a 1999 meeting between Marchuk and local residents were never proven.

In 1998 the Government created a penal department to oversee reform of the penal system and to serve as the administrative center of the penal system. The new department originally was placed under the oversight of the Ministry of Interior, but it was given the status of an independent government agency by presidential decree in 1999. However, human rights groups report that this change in status has not affected its practices. The Government failed to punish prison and police officials who committed or condoned violence against prisoners.

There was no improvement during the year in prison conditions, which are harsh, life-threatening, and do not meet minimum international standards. Prison officials intimidated and mistreated inmates. Due in part to the severe economic crisis, prisons and detention centers were severely overcrowded and lacked adequate sanitation and medical facilities. According to official statistics, funding for prisons decreased by almost 14 percent over the last 3 years. During the year, the Government announced a general amnesty for 34,800 inmates intended to relieve overcrowding. Because the country lacks a well-developed system of suspended sentences, and the law does not differentiate between misdemeanors and felonies, at least one-third of inmates were convicted of only minor violations.

Conditions in pretrial detention facilities routinely failed to meet minimum international standards. Inmates sometimes were held in investigative isolation for extended periods and subjected to intimidation and mistreatment by jail guards and other inmates. Overcrowding is common in these centers. For example, the pretrial detention center in Kiev, houses 3,500; it was constructed to hold 2,850 persons.

According to official sources, information on the physical state of prison walls and fences as well as pretrial detention blocks is considered to be a government secret. However, the press reported freely about harsh prison conditions. In 1998 there were 1,901 deaths in prisons and detention facilities, which was more than 3 times the death rate of the general population. Poor sanitary conditions result in deaths from diseases such as tuberculosis and dysentery. There are frequent incidents of murder by fellow inmates and suicide.

Conditions in the Interior Ministry's Corrective Labor and Treatment Centers for Alcoholics (LTP's), where violent alcoholics are confined forcibly by court decision, differ little from those in prisons. Virtually no treatment is available. According to statistics from March, 12 LTP's with some 3,000 inmates continued to operate. Although some centers were transferred to the Health Ministry during the year, the Government had not lived up to its earlier commitment to transfer all of the LTP's to the ministry. Police have the right to take forcibly any person appearing drunk in public to special sobering centers. Human rights groups reported cases of police mistreatment, robbing, or beating of detainees at such centers (see Section 1.a.). In August 1999, the Government issued a decree directing the closure of such centers by the end of this year; however, some centers remained open at year's end.

The Government continued to allow prison visits from human rights monitors; however, these monitors reported that it can be difficult to obtain access to prisons. Cases were reported in which prisoners were not permitted correspondence and family visits were allowed only once per year. Prisoners may complain to the Ombudsman about the conditions of detention, but human rights groups reported that inmates were punished

for initiating complaints.

#### d. Arbitrary Arrest, Detention, or Exile

Arbitrary arrest and detention remain problems. The law provides that authorities may detain a suspect for 3 days without a warrant, after which an arrest order must be issued. The Constitution stipulates that only courts may issue arrest warrants, but under its transitional provisions, the Prosecutor's office retains the right to issue search and arrest warrants until 2001. The maximum period of detention after charges have been filed is 18 months, but the law does not limit the aggregate time of detention before and during a trial. The law permits citizens to contest an arrest in court or appeal to the prosecutor. The Constitution requires immediate notification of family members concerning an arrest, but this action often is not taken in practice.

By law a trial must begin no later than 3 weeks after indictment, but this requirement rarely is met by the overburdened court system. Months may pass before a defendant finally is brought to trial, and the situation did not improve during the year. Complicated cases can take years to go to trial. Although the 1996 amendment to the Criminal Procedures Code provides for bail, it is used rarely. Restrictions on travel outside a given area sometimes are employed. Accused persons usually are held without bail in pretrial detention for several months. As of October, there were 228,000 prisoners, 48,000 of whom were persons held in pretrial detention. The Constitution provides compensation for unlawful or arbitrary arrest, detention, or conviction, but there are no known cases in which this provision was invoked. Reports indicated that this inaction is a result of lack of faith in the judiciary rather than the absence of unlawful or arbitrary detentions.

The law stipulates that a defense attorney be provided without charge to the indigent from the moment of detention or the filing of charges, whichever comes first. There are insufficient numbers of defense attorneys to protect suspects from unlawful, lengthy imprisonment under extremely poor conditions. Although the concept of providing attorneys from the state system exists in principle, public attorneys often refuse to defend indigents for the low government fee. While in custody, a suspect or a prisoner is allowed by law to talk with a lawyer in private; however, human rights groups reported that the client-attorney privilege occasionally was denied by prison or investigative officials. To protect the defendant, each investigative file must contain a document signed by the defendant attesting that the charges against him, his right to an attorney, and his right not to give evidence against himself or his relatives have been explained to him. An appeals court may dismiss a conviction or order a new trial if this document is missing. As defendants increasingly became aware of their rights, they insisted on observance of these procedures. However, many persons remained unaware of these safeguards.

The Government occasionally charges persons who are openly critical of the Government (usually opposition politicians or editors and journalists from the opposition press) with criminal libel or tax evasion charges (see Section 2.a.). In August Oleksandr Tymoshenko, the husband of then-Deputy Prime Minister Yulia Tymoshenko, and a business associate were arrested on charges of embezzlement of state funds. Tymoshenko's efforts to reform the energy sector had drawn strong opposition, most notably from powerful businesspersons closely tied to the Government. Although the investigation of the men reportedly was underway for some time, some observers believed that timing of the arrests was intended to pressure Tymoshenko.

In May 1999, police officers in Mukachevo detained some 70 persons, primarily Roma, in a local market for illegal trading. The detainees were held without charges for 2 days and forced to perform manual labor for police officers. In July 1999, three Romani women were detained for failing to produce identification. They were ordered to clean the police station but they were released when a leader of a Romani NGO intervened on their behalf. There were no reports of incidents targeting Roma during the year.

Police also arbitrarily detained persons for extensive document checks and vehicle inspections (see Section 1.f.).

Official corruption is widespread. The Government apparently enforced anticorruption statutes selectively for political ends. While anticorruption statutes were applied increasingly against lower-level officials, such enforcement reportedly is lacking against high-level officials. In 1999 Vasylkiv Mayor Valeriy Popovych was detained briefly on corruption charges after complaining of government harassment due to his support for opposition candidate Moroz during the October 1999 presidential election. Charges against Popovych were dropped in January; however, in February he resigned his post under pressure from regional authorities. In 1999 a number of persons arraigned on criminal and corruption charges claimed that they were victimized because of their support for the former Prime Minister, who is currently on trial abroad for money laundering, and government opponent Pavlo Lazarenko. Former government officials Petro Shkudun, Mykola Syvulsky, and Vasyl Koval claimed that their cases were motivated politically due to their links to Lazarenko. In December 1999, Koval was sentenced to serve five years in prison on corruption charges. In June Syvulsky

again was arrested on corruption charges while serving as an aide to former Deputy Prime Minister Tymoshenko, who had been associated with Lazarenko.

The Government does not employ forced exile.

e. Denial of a Fair Public Trial

The Constitution provides for an independent judiciary; however, in practice, the judiciary is subject to considerable political interference from the executive branch and also suffers from corruption and inefficiency. The courts are funded through the Ministry of Justice, which allows the Government to influence the judicial process. The presidential administration also reportedly continues the old Soviet tradition of weighing in by telephoning justices directly.

The establishment of an independent judicial system provided for in the Constitution still awaits the passage of implementing legislation. As a result, the judiciary continues to operate according to Soviet principles. Most judges and prosecutors were appointed during the Soviet era, and court officials are attuned closely to the Government's interests. The High Judicial Council, which approves the appointment of and disciplines judges, consists primarily of senior executive branch representatives, including the Prosecutor General and the Chairman of the State Security Service. Human rights lawyers claimed that the judiciary was not free from government influence, particularly at the regional and local levels. For example, court chairmen are appointed directly by the executive and wield considerable influence over the outcome of a case through case assignments, the control of staff and promotions, and the control of social benefits available to judges. Court chairmen reportedly deliberately overburden independent-minded judges with too many cases and then instigate disciplinary actions against them for not completing their casework. There are credible reports that court chairmen regularly followed executive instructions. The Ministry of Justice and court chairmen also controlled judges' housing. Judges whose rulings were not in accord with the executive branch were provided with apartments far from city centers or are ignored altogether when new apartments became available.

The judiciary lacks sufficient staff and funds, which engenders inefficiency and corruption. The court system receives all its funding from the Ministry of Justice. Budgetary funds allocated by the Government in 1999 covered only half of the judiciary's requirements for the year; funding levels for the year were said to be similarly inadequate. In 1999 the Supreme Court challenged in the Constitutional Court the legality of the Government's practice of arbitrarily limiting the judiciary's budget. In its petition, the Supreme Court complained that the district courts received only 51 percent of required funding, military courts 33 percent, and oblast courts 62 percent. In 1999 the Constitutional Court ruled that the Government's practice of limiting the judiciary's budget was unconstitutional. This attempt by the Government to cut the judiciary's budget, and similar attempts in recent years, demonstrated clearly the dependence of the court system on the executive and the Government's willingness to make use of that dependence.

The authority and independence of the judicial system also are undermined by the poor record of compliance with court decisions in civil cases. Provisions calling for criminal punishment for noncompliance with court decisions rarely are used. Compliance is particularly poor if the decision clashes with government interests. The Prosecutor General, the head of the Supreme Court, the chairmen of regional courts, and the chairmen of the Kiev municipal court (or the deputies of these officials) can suspend court decisions, which leads to interference, manipulation, and corruption.

Many local observers regard the Constitutional Court as the country's most independent judicial body. Human rights groups state that overall the Constitutional Court has maintained a balance of fairness. However, in March the Court ruled that the President's proposed referendum on expanding presidential authority was constitutional, although it threw out two of the six original questions. Observers believed that this decision indicated a pro-presidential bias.

There has been little progress in implementing the provisions of the 1996 Constitution that provide for a thorough restructuring of the court system, to be accomplished by June 2001, including the introduction of appellate courts. In an effort to meet the June 2001 deadline, the President established a council on judicial reform in August; however, the council has had little impact and at year's end, Parliament had not passed a new law on the judiciary. Pending the passage of the required enabling legislation, the court system still is organized along Soviet lines, with the exception of the Constitutional Court.

The court system consists of the Constitutional Court, general jurisdiction courts, and arbitration and commercial courts. General jurisdiction courts and arbitration courts are organized on three levels: district courts; regional courts; and the Supreme Court and Supreme Arbitration Court. General jurisdiction courts are divided into criminal and civil sections. Military courts only hear cases involving military personnel.

The Constitutional Court consists of 18 members, appointed for 9-year terms in equal numbers by the President, the Parliament, and the Congress of Judges. The Constitutional Court is the ultimate interpreter of legislation and the Constitution, and it determines the constitutionality of legislation, presidential edicts, cabinet acts, and acts of the Crimean Autonomous Republic. The President, at least 45 Members of Parliament, the Supreme Court, the Ombudsman, and the Crimean legislature can request the Constitutional Court to hear a case. Citizens may apply to the Constitutional Court through the Ombudsman, although in practice the Ombudsman has yet to exercise this right. In some limited cases, the Constitutional Court can interpret law for individual citizens, when the applying citizen provides compelling proof that a constitutional provision is violated, or that it is interpreted differently by different government bodies. However, of some 8,000 such petitions only 4 were accepted for review as of early 1999.

Under the current court system, cases are decided by judges who sit singly, occasionally with two public assessors ("lay judges" or professional jurors with some legal training), or in groups of three for more serious cases. The Constitution provides for public, adversarial trials, including a judge, public assessors, state prosecutor, defense, and jury (when required by law). With some qualifications, these requirements are upheld in practice. However, implementing criminal procedure legislation establishing juries has not been adopted. Complicated cases can take years to go to trial. In the interim, defendants usually wait in pretrial detention. The 1996 amendment to the Soviet-era Criminal Procedures Code provides for bail, but to date it has been used rarely (see Section 1.d.).

Organized crime widely is alleged to influence court decisions. The Justice Ministry reported that in 1997 135 judges were disciplined, 22 dismissed, and 5 prosecuted for bribery. No higher court judge has been disciplined to date. Criminal elements routinely use intimidation to induce victims and witnesses to withdraw or change their testimony. The law requires that a special police unit protect judges, witnesses, defendants, and their relatives. However, the unit has not yet been formed, and trial participants are vulnerable to pressure. There is a witness protection law, but it is in abeyance because of lack of funding. Under a law adopted in March, the names and addresses of victims and witnesses can be kept confidential, if they request protection due to fear for their lives.

Prosecutors, like the courts, also are organized into offices at the rayon, oblast, and republic levels. They are responsible ultimately to the Prosecutor General, who is appointed by the President and confirmed by the Parliament for a 5-year term. Regional and district prosecutors are appointed by the Prosecutor General.

Although by law prosecutors and defense attorneys have equal status, in practice prosecutors are much more influential. The procuracy, in its pretrial investigative function, acts in effect as a grand jury. A prosecutor may initiate investigation through his own office or conduct investigations initiated by the Ministry of Internal Affairs or the SBU. Prosecutors also have the right to issue warrants without court approval and to suspend court decisions, thus effectively placing the procuracy above the courts in the legal hierarchy. In several cases, the procuracy has used its judicial review powers to annul court decisions unfavorable to the presidential administration's economic or political interests and ordered the case reexamined by a different court. The Office of the Prosecutor General practices selective prosecution and initiates investigations against the political or economic opponents of the President and his allies. The Prosecutor General ignores parliamentary and court requests for investigations into high-ranking persons if the accused is a presidential ally.

The Constitution considerably curtails the prosecutor's authority, limiting it to prosecution, representing the public interest in court, oversight of investigations, and implementation of court decisions. However, in the absence of new criminal and criminal procedure codes to implement constitutional restrictions, the transitional provisions of the Constitution permit the prosecutor's office to conduct investigations and oversee general observance of the law. In November 1997, the Constitutional Court interpreted the Procuracy Law, ruling that citizens can dispute prosecutors' decisions in court.

The Constitution includes procedural provisions to ensure a fair trial, including the right of a suspect or witness to refuse to testify against himself or his relatives. However, pending passage of legislation to implement these constitutional provisions, a largely Soviet-era criminal justice system remains in place. While the defendant is presumed innocent, conviction rates have changed little since the Soviet era. Nearly all completed cases result in convictions.

According to official statistics, in the first half of 1999, there were 114,600 convictions, between 36 and 39 percent of which resulted in prison sentences. A total of 494 defendants were acquitted, which is an increase of 11 percent from the corresponding period in 1998. In the first half of the year, there were 113,902 convictions and 375 acquittals. However, as judges frequently send cases unlikely to end in conviction back to the prosecutor for "additional investigation" (which usually leads to the dropping of the case), these statistics are somewhat misleading. Additionally evidence indicates that suspects often bribe court officials to drop charges before cases go to trial, to lessen sentences, or to commute them.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

Authorities infringed on citizens' privacy rights. Although the Constitution requires that courts issue search warrants, this provision has not yet been implemented, and prosecutors continue to issue search warrants. The SBU may conduct intrusive surveillance and searches without a warrant, with the consent of the Prosecutor General, who nominally oversees this function of the SBU. However, the extent to which the Prosecutor General utilizes his authority to monitor SBU activities and to curb excesses by security officials is unknown. The Constitution provides citizens with the right to examine any dossier on them in possession of the SBU and to sue for physical and emotional damages incurred by an investigation. However, this right does not exist in practice, because the necessary implementing legislation has not been passed.

Some remnants of Soviet control mechanisms persist. There are no probable cause statutes, and police officials and militia personnel have the right to stop persons and vehicles arbitrarily to initiate extensive document checks and vehicle inspections. In February the Ministry of Interior ordered traffic police to end the practice of stopping vehicles without reason; however, the order had little effect in practice. Police may detain a person arbitrarily for up to 3 hours to verify identity. There have been reports that police sometimes abused this right.

Journalists whose news reports are critical of the Government or who covered opposition politicians reported that frequently they were followed by SBU agents and that their telephones were wiretapped (see Section 2.a.).

Under the current "propiska" registration system, all internal passports contain a stamp indicating residence and matrimonial status (see Section 2.d.). The Government has indicated its intent to eliminate the propiska system, but little progress has been made to date.

The Law on Public Organizations prohibits members of the police, SBU, and armed forces from joining political parties. Prior to the 1998 parliamentary elections, mass--perhaps coerced--enrollment of public sector and government employees augmented the ranks of progovernment parties, particularly the People's Democratic Party (see Section 2.b).

There were no reported cases of the political abuse of psychiatry; however, the press and human rights groups have reported several cases of abuse of psychiatry for economic reasons. Persons involved in property, inheritance, or divorce disputes were diagnosed wrongfully with schizophrenia and confined to psychiatric institutions. The disputes often entail the corruption of psychiatric experts and court officials. In February Parliament adopted a new Law on Psychiatry which bans abuse of psychiatry for political and nonmedical reasons and provides safeguards against such abuse. However, human rights monitors report that the law was not implemented by year's end, and the old Soviet system of classifying mental illness is still in use. Persons diagnosed with mental illness may be confined and treated forcibly, declared not responsible for their actions, and stripped of their civil rights without being present at the hearings or notified of the ruling. In the meantime, the 1988 old Soviet psychiatric regulation remains in force. There are some 1.2 million registered psychiatric patients in the country. Within 3 days after forcible confinement to a hospital, a patient must be examined by three doctors. Patients (including convicted prisoners) subsequently must be examined by the senior regional psychiatric commission within half a year. According to the Ukrainian Psychiatric Association, the Health Care Ministry has not always cooperated with human rights groups attempting to monitor abuse of psychiatry.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution and a 1991 law provide for freedom of speech and of the press; however, in practice the Government interfered with the news media and restricted these rights through the widespread use of tax inspections, libel cases, subsidization of friendly media, and intimidation of journalists. In addition journalists reported feeling more subtle forms of pressure, in particular to provide positive coverage of the President, which resulted in more self-censorship. The Government owns or controls most of the national radio and television channels, which is the primary source of information for most citizens. However, there is a wide variety of newspapers and periodicals available, which espouse different political points of view, and individuals can and frequently do criticize the Government without reprisal. Though limited in readership, internet publications, in particular *Ukrainska Pravda*, played a key role in covering the disappearance of Heorhiy Gongadze and the scandal surrounding allegations of Presidential involvement in the case (see Section 1.b.). Government attempts to control the press were reported by the media.



The print media, both independent and government-owned, demonstrated a tendency toward self-censorship on matters that the Government and in particular the President deemed sensitive. Private newspapers have been established and are free to function on a purely commercial basis, although very few are profitable. However, they are subject to various pressures, such as control of access to affordable state-subsidized newsprint; dependence on political patrons who may facilitate financial support from the State Press Support Fund; close scrutiny from government officials, especially at the local level; and politically motivated visits by tax inspectors. In 1997 the President issued a decree on support of the press that requires the Cabinet to draw up a list of publications needing government support, including those published by central and local governments, public organizations, associations, unions, educational institutions, and newspaper employees. The journalistic community believed that this decree was intended to control the press by supporting loyal members. In December the President issued a decree defending freedom of the press; however, observers report it has had little impact. The dependence of much of the press on government patronage has inhibited criticism, particularly at the local level. The State Committee for Information Policy has warned some periodicals against fomenting ethnic tensions and conducting antistate propaganda and has applied to the Prosecutor's Office to open investigations into those newspapers. In December a court in Kharkiv fined the local chapter of PROSVITA, an organization that promotes Ukrainian language and culture, and ordered it to cease publication of its newspaper on the grounds that it had published an anti-Semitic article. The case presented the first time a court has punished a publication for anti-Semitic writings.

The Committee on Protection of State Secrets enjoys broadly defined powers over all media. In 1997 the Cabinet adopted a regulation that further defined state secrets to include information on executions, the state of prisons, pretrial detention blocks, and centers for the forcible treatment of alcoholics. (The "state of prisons" refers to the physical state of the prison walls and fences, not prison conditions.) The press is able to report about harsh prison conditions without any inhibition. Journalists report that, in general, the committee has not interfered with their activities (see Section 1.c.).

The Government pressured media outlets to support an April referendum on amending the Constitution to increase presidential powers. In March the Tax Administration temporarily froze the accounts of the newspaper Silski Visti, (which opposed the referendum and supported Socialist candidate Oleksandr Moroz during the presidential election), and confiscated its paper stock. In September the Tax Administration fined Silski Visti more than \$178,000 (1 million hryvnia) for tax evasion. In October Silski Visti temporarily suspended publication due to heavy financial pressures. The paper resumed publication, but continued to experience financial problems.

In April the newly founded newspaper Itogi was subjected to eviction, disconnection of its phone lines, and tax inspections of its main investor after publishing an article critical of a senior government official. The newspaper went out of business after publishing only five issues.

The Government, both central and local, regularly targeted opposition newspapers with unannounced tax inspections or fire and building code inspections. Prior to the 1999 presidential election, the Government forced at least one opposition newspaper, Polytyka, to close. Government officials initiated more than 20 criminal and civil libel cases against Polytyka's editor, Oleg Lyashko, asking more than \$40 million (220 million hryvnia) in damages. Lyashko was acquitted in one of two criminal libel cases that charged him with slandering the President and his staff, but that acquittal was overturned in December 1999. At a December hearing, Lyashko's trial was tentatively set for January 2001. In January the State Committee for Information Policy refused to register Lyashko's new publication Svoboda. In February the Committee reversed its decision, and Svoboda began publication. However, government officials subsequently pressured Lyashko to change the tone of coverage in Svoboda, and the newspaper has experienced financial difficulties that prevented its regular basis publication. In March Lyashko was assaulted in the entryway to his home after publishing an article critical of an Odesa businessman. Although he initially blamed the Government, Lyashko later accused the businessman of orchestrating the attack. There has been no further investigation into the case, and no one has been charged with the assault.

The newspaper Den, which supported presidential candidate and former Prime Minister Yevhen Marchuk during the 1999 presidential campaign, was subjected to 25 tax inspections between January and July 1999. After Marchuk joined the Government as Secretary of the National Security and Defense Council during the year, Den became less critical of the Government and the repeated tax inspections ceased.

In 1999 the Parliament adopted a resolution on the media that called for investigations into all complaints of harassment of nonstate media outlets by the Tax Inspectorate, the Prosecutor General's Office, or the presidential administration. Journalists reported that the resolution had little impact.

Government officials also frequently use criminal libel cases or civil suits based on alleged damage to a "person's honor and integrity" to punish critics. Article 7 of the Civil Code allows anyone, including public officials, to sue for damages if circulated information is untrue or insults a person's honor or dignity. Article 125

of the Criminal Code prescribes imprisonment of up to 3 years for libel. There is no distinction between private individuals and public officials (except for the President), nor is there a limit to the amount of damages that may be awarded. Consequently, any journalist who publishes an article critical of a public official risks being sued for damages.

The Prosecutor General can file criminal libel charges. According to Ministry of Justice statistics, 123 persons were convicted in 1998 for criminal libel. Of these seven cases resulted in prison sentences. According to the Union of Journalists of Ukraine, journalists lose two of every three cases against them in the courts. In 1999 approximately 2,250 libel cases were filed. Exact figures for this year are not available; however, media analysts expect a similar number of cases for the year. Journalists complain that because the law does not limit damages, it can be used to drive opposition newspapers out of business.

On occasion fines were so large that accounts were frozen and equipment confiscated by the Tax Inspectorate to enforce payment. It is clear that a large number of libel and personal dignity suits are motivated politically. Moreover, even when the actions of the Tax Inspectorate are overturned by subsequent court decisions, the damage to the newspapers' finances can be irreparable. Their accounts remain frozen until all appeals are completed. Independent newspapers face further financial pressure as they try to compete with pro-presidential newspapers, which are sold at a price significantly below cost. Newspapers aligned with the presidential administration reportedly often are financed by wealthy presidential allies. The threat of multiple lawsuits for large amounts of money also was used to pressure owners of opposition newspapers to sell their shares to their political opponents.

In March the Lviv newspaper Express, which had been critical of the local government, was fined \$26,785 (150,000 hryvnia) for libel. Journalists and students protested the decision, and in April the regional court overturned the lower court's decision. Journalists sometimes were subjected to physical attacks related to their professional activities. Some journalists reported threats of arrest or assaults when investigating crime and official corruption (see Section 1.c.). The intermeshing of organized crime and many public officials makes it difficult to assess whether these attacks and threats were motivated politically.

Despite government pressure and media self-censorship, the variety of newspapers and periodicals on the market, each espousing the view of its respective sponsor, provides a variety of opinion. Foreign newspapers and periodicals circulate freely.

The broadcast media, the primary source of news and information for most citizens, are either state-owned or, in the case of private stations, subject to pressure from the Government, which took steps during the year to strengthen its control over this sector. In 1998 the Government transferred over state-owned broadcasting and transmission facilities from the Derzhtele-radio (State Committee for Television and Radio) directly to the Information Ministry (later reorganized as the State Committee for Information Policy). The President and the Parliament each appoint half of the members of the National Council for Television and Radio Broadcasting, which issues licenses and allocates broadcasting time. President Kuchma did not name his half of the eight-member board until June, after the Parliament replaced its original four members in May. In the absence of a functioning council, the Government had virtually unchallenged control over media licensing prior to the 1999 presidential election and in the lead-up to the April referendum.

Other state agencies took advantage of the lack of a working council to harass opposition stations. For example, the frequency of arbitrary tax inspections increased considerably without a working council. The State Electro-Communications Inspectorate increased the fees for broadcast frequencies tenfold in 1999 without the prior approval of the council. Fee increases disproportionately affected independent stations, since state channels were permitted to ignore payment of their frequency fees. The law entitles private and foreign companies to obtain a license to establish and operate their own transmission facilities.

Prior to the 1999 presidential election, the Government increased pressure on the broadcast media, using tax inspections and other measures, and forced at least five local television stations (four in the Crimea and one in Dnipropetrovsk) to close. Numerous sources charged that the administration continued to use government agencies, particularly the Tax Inspectorate, to pressure the opposition media and businesses supporting its political opponents. Prior to the 1999 presidential election, the independent television station STB, one of the more balanced and independent media outlets, faced increasing harassment by government entities. It was threatened with closure and the arrest of its owners if it did not cede financial and editorial control to presidential supporters. Its staff suffered physical assaults, threatening phone calls, robbery, and lawsuits. In August 1999, the State Tax Administration froze STB's bank accounts for failure to pay sufficient taxes. By October 1999, the station was sold and had changed its news programming to take a more pro-Kuchma approach. During the 1999 presidential election campaign, several regional television outlets were taken off the air by government authorities, allegedly to prevent coverage of opposition presidential candidates. The presidential campaign saw a marked imbalance in the coverage of candidates on national television and radio channels, with opposition candidates receiving very limited and often negative coverage at the national level.

Opposition candidates had more success in obtaining access to smaller local and regional television channels.

In the period leading up to the April referendum on constitutional amendments that would expand presidential powers, television coverage was overwhelmingly pro-presidential and pro-referendum.

There is no known government censorship of books, film, or theater.

While major universities are state owned, they operate for the most part under full autonomy. However, academic freedom is an underdeveloped and poorly understood concept. Nepotism and bribery reportedly are common during entrance exams and also influence the granting of degrees. Administrators of universities and academic and research institute directors possess the power to silence colleagues by denying them the ability to publish, withholding pay and housing benefits, or directly terminating them. This atmosphere tends to limit the spirit of free inquiry. Restrictions by the Communications Ministry on the mailing of scientific documents also have caused concern.

The State Secrets Committee maintains offices for the protection of state secrets in state scientific and research institutes, including those not conducting any classified research. An April 1998 presidential edict allows only government-designated contractors to provide Internet access at state institutions that have such censorship offices. Human rights groups feared that this edit may limit the freedom of information for universities and scientific research institutes. A July presidential decree identified the development of the Internet as a priority of national information policy and instructed the Government to design a state program to develop the Internet network. A 1999 presidential decree sought to require that all communication companies and Internet providers be licensed and their equipment be fitted for wiretapping (implicitly by the security services). However, the decree was blocked by Parliament in 1999.

All private and religiously affiliated universities operated without any reported state interference or harassment.

#### b. Freedom of Peaceful Assembly and Association

The Constitution and law provide for freedom of assembly, and the Government generally respects this right in practice; however, there were some instances in which this right was restricted. The 1988 law on public assembly circumscribes freedom of assembly by stipulating that organizations must apply for permission to their respective local administration at least 10 days before a planned event or demonstration. The Criminal Code prescribes up to 6 months in prison, 1 year of corrective labor, or a fine for repeatedly staging unauthorized demonstrations. The 1996 Constitution requires that demonstrators merely inform the authorities of a planned demonstration in advance; however, authorities insist that all demonstrations meet the restrictive requirements of the 1988 law. Under the 1988 law, demonstrators are prohibited from inciting violence or ethnic conflict and from calling for the violent overthrow of the constitutional order. In practice unlicensed demonstrations are common, and most but not all occur without police interference, fines, or detention. There were no reports of cases of interference during the year.

Communist groups complain that the authorities failed to punish Ukrainian nationalist groups who harassed them during their demonstrations. Ukrainian nationalist groups in turn complained that the authorities do not protect them from harassment by Communist groups. On December 22, a local court ordered antipresidential protestors occupying a large square in central Kiev to vacate the area because of impending holiday celebrations. Demonstrations by the group outside of Parliament and other Government buildings also were banned. On the same day the court decision was reached, the demonstrators announced that they would dismantle all but one of the protest tents erected on the square, and would resume demonstrations after the holidays if warranted. The demonstrations ended peacefully December 23.

The Constitution, law, and government regulations restrict freedom of association to varying degrees. These restrictions generally apply to organizations that are considered dangerous, such as those which advocate violence or racial and religious hatred, or which threaten the public order or health.

A government requirement that a political party have representatives in at least half of the country's regions in order to register officially has limited the ability of Russian, Crimean, Tatar, and Romanian groups to organize (see Section 3).

The Ministry of Justice, with the Prosecutor General's consent, has the authority to warn, fine, or suspend operations of political parties for illegal operations. Suspension can be for up to 3 months and can be extended for 6 months upon the Ministry's request.

In 1998 the Constitutional Court invalidated the 1993 Crimean law on citizens' associations, thus outlawing

regional Crimean parties. A 1992 law on public organizations prohibits the Government from financing or materially supporting political parties. According to this law, political parties may not receive funds from abroad or maintain accounts in foreign banks. The law prohibits police authorities, members of the SBU, and armed forces personnel from joining political parties.

Prior to the 1998 parliamentary elections, the mass--perhaps coerced--enrollment of public sector and government employees augmented the ranks of progovernment parties, particularly the People's Democratic Party (see Section 1.f.).

Freedom of association also is restricted through a strict registration requirement that lends itself to political manipulation and corruption; however, in practice such regulations seldom are employed to restrict this freedom. Groups must register with the Government to pursue almost any purpose. The Ministries of Internal Affairs, Justice, Economy, and Foreign Economic Relations, as well as the State Committees on Religion and Broadcasting and other government bodies have registration functions and used this power to limit freedom of association (see Sections 1.d. and 2.c.).

For example, after almost a year of attempting to register as a national organization, a Luhansk-based group for the protection of gay rights, the Nash Mir Gay and Lesbian Center, succeeded in registering in November 1999. According to group representatives, local officials indicated that the group was not registered because it was a gay rights group. The group reported this year that it is functioning without problems.

Groups must be registered with the Government to engage in almost any activity, whether commercial, political, religious, or philanthropic. Unregistered groups are prohibited from opening bank accounts, acquiring property, or entered into contracts.

The registration law gives the Government the right to inspect the activities of all registered groups. This law requires that a party specify all its activities in its charter, but the party is not required to notify authorities of all its meetings. A change in the group's charter necessitates reregistration.

A registered group may not duplicate any function or service that the Government is expected to provide. For example, human rights lawyers who wished to represent prisoners were prohibited from establishing an association because the Government is required by the Constitution to provide lawyers for the accused. However, this requirement is not always enforced. In the

mid-1990's, AI was refused registration under the pretext that human rights protection is the function of the State. It continued to apply and eventually was registered.

### c. Freedom of Religion

The Constitution and the 1991 Law on Freedom of Conscience and Religion provide for separation of church and state and the right to practice the religion of one's choice and the Government generally respects these rights in practice, with the exception of some nonnative religion